CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1089

Chapter 356, Laws of 2011

(partial veto)

62nd Legislature
2011 Regular Session

HIGHER EDUCATION--INSTRUCTIONAL MATERIALS--SPECIALIZED FORMATS

EFFECTIVE DATE: 07/22/11

Passed by the House April 14, 2011
Yeas 97  Nays 0

FRANK CHOPP
Speaker of the House of Representatives

Passed by the Senate April 11, 2011
Yeas 46  Nays 0

BRAD OWEN
President of the Senate

Approved May 16, 2011, 2:33 p.m., with the exception of Section 1 which is vetoed.

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is SUBSTITUTE HOUSE BILL 1089 as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER
Chief Clerk

FILED
May 17, 2011

CHRISTINE GREGOIRE
Governor of the State of Washington

Secretary of State
State of Washington
AN ACT Relating to instructional materials provided in a specialized format version; amending RCW 28B.10.916; and creating a new section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

*NEW SECTION. Sec. 1. The legislature finds that the knowledge, skill, and ability to succeed both academically and later in a chosen profession are accumulated through myriad sources, including instructional materials. Therefore, it is the intent of the legislature to ensure that students provided with instructional materials pursuant to RCW 28B.10.916 be permitted to retain those materials if they so desire.

Sec. 2. RCW 28B.10.916 and 2004 c 46 s 1 are each amended to read as follows:

(1) An individual, firm, partnership or corporation that publishes or manufactures instructional materials for students attending any public or private institution of higher education in the state of Washington shall provide to the public or private institution of higher education, for use by students attending the institution, any
instructional material in an electronic format mutually agreed upon by
the publisher or manufacturer and the public or private institution of
higher education. Computer files or electronic versions of printed
instructional materials shall be provided; video materials must be
captioned or accompanied by transcriptions of spoken text; and audio
materials must be accompanied by transcriptions. These supplemental
materials shall be provided to the public or private institution of
higher education at no additional cost and in a timely manner, upon
receipt of a written request as provided in subsection (2) of this
section.

(2) A written request for supplemental materials must:
(a) Certify that a student with a print access disability attending
or registered to attend a public or participating private institution
of higher education has purchased the instructional material or the
public or private institution of higher education has purchased the
instructional material for use by a student with a print access
disability;
(b) Certify that the student has a print access disability that
substantially prevents him or her from using standard instructional
materials;
(c) Certify that the instructional material is for use by the
student in connection with a course in which he or she is registered or
enrolled at the public or private institution of higher education; and
(d) Be signed by the coordinator of services for students with
disabilities at the public or private institution of higher education
or by the college or campus official responsible for monitoring
compliance with the Americans with disabilities act of 1990 (42 U.S.C.
12101 et seq.) at the public or private institution of higher
education.

(3) An individual, firm, partnership or corporation specified in
subsection (1) of this section may also require that, in addition to
the requirements in subsection (2) of this section, the request include
a statement signed by the student agreeing to both of the following:
(a) He or she will use the instructional material provided in
specialized format solely for his or her own educational purposes; and
(b) He or she will not copy or duplicate the instructional material
provided in specialized format for use by others.
(4) A public or private institution of higher education that provides a specialized format version of instructional material pursuant to this section may not require that the student return the specialized format version of the instructional material, except that if the institution has determined that it is not required to allow the student to retain the material under the Americans with disabilities act or other applicable laws, and the material was translated or transcribed into a specialized format at the expense of the institution and the cost to reproduce a copy of the translation or transcription is greater than one hundred dollars, the institution may require that the student return the specialized format version.

(5) If a public or private institution of higher education provides a student with the specialized format version of an instructional material, the media must be copy-protected or the public or private institution of higher education shall take other reasonable precautions to ensure that students do not copy or distribute specialized format versions of instructional materials in violation of the copyright revision(©) act of 1976, as amended (17 U.S.C. Sec. 101 et seq.).

((5))) (6) For purposes of this section:

(a) "Instructional material or materials" means textbooks and other materials that are required or essential to a student's success in a postsecondary course of study in which a student with a disability is enrolled. The determination of which materials are "required or essential to student success" shall be made by the instructor of the course in consultation with the official making the request in accordance with guidelines issued pursuant to subsection ((9)) (10) of this section. The term specifically includes both textual and nontextual information.

(b) "Print access disability" means a condition in which a person's independent reading of, reading comprehension of, or visual access to materials is limited or reduced due to a sensory, neurological, cognitive, physical, psychiatric, or other disability recognized by state or federal law. The term is applicable, but not limited to, persons who are blind, have low vision, or have reading disorders or physical disabilities.

(c) "Structural integrity" means all instructional material, including but not limited to the text of the material, sidebars, the table of contents, chapter headings and subheadings, footnotes,
indexes, glossaries, graphs, charts, illustrations, pictures, equations, formulas, and bibliographies. Structural order of material shall be maintained. Structural elements, such as headings, lists, and tables must be identified using current markup and tools. If good faith efforts fail to produce an agreement between the publisher or manufacturer and the public or private institution of higher education, as to an electronic format that will preserve the structural integrity of instructional materials, the publisher or manufacturer shall provide the instructional material in a verified and valid HTML format and shall preserve as much of the structural integrity of the instructional materials as possible.

(d) "Specialized format" means Braille, audio, or digital text that is exclusively for use by blind or other persons with print access disabilities.

(7) Nothing in this section is to be construed to prohibit a public or private institution of higher education from assisting a student with a print access disability through the use of an electronic version of instructional material gained through this section or by transcribing or translating or arranging for the transcription or translation of the instructional material into specialized formats that provide persons with print access disabilities the ability to have increased independent access to instructional materials. If such specialized format is made, the public or private institution of higher education may share the specialized format version of the instructional material with other students with print access disabilities for whom the public or private institution of higher education is authorized to request electronic versions of instructional material. The addition of captioning to video material by a Washington public or private institution of higher education does not constitute an infringement of copyright.

(8) A specialized format version of instructional materials developed at one public or private institution of higher education in Washington state may be shared for use by a student at another public or private institution of higher education in Washington state for whom the latter public or private institution of higher education is authorized to request electronic versions of instructional material.

(9) Nothing in this section shall be deemed to authorize
any use of instructional materials that would constitute an infringement of copyright under the copyright revision act of 1976, as amended (17 U.S.C. Sec. 101 et seq.).

(10) The governing boards of public and participating private institutions of higher education in Washington state shall each adopt guidelines consistent with this section for its implementation and administration. At a minimum, the guidelines shall address all of the following:

(a) The designation of materials deemed "required or essential to student success";

(b) The determination of the availability of technology for the conversion of materials pursuant to subsection (((4)) (5) of this section and the conversion of mathematics and science materials pursuant to subsection (((5)) (6) of this section;

(c) The procedures and standards relating to distribution of files and materials pursuant to this section;

(d) The guidelines shall include procedures for granting exceptions when it is determined that an individual, firm, partnership or corporation that publishes or manufactures instructional materials is not technically able to comply with the requirements of this section; and

(e) Other matters as are deemed necessary or appropriate to carry out the purposes of this section.

(11) A violation of this chapter constitutes an unfair practice under chapter 49.60 RCW, the law against discrimination. All rights and remedies under chapter 49.60 RCW, including the right to file a complaint with the human rights commission and to bring a civil action, apply.

Passed by the House April 14, 2011.
Passed by the Senate April 11, 2011.
Approved by the Governor May 16, 2011, with the exception of certain items that were vetoed.
Filed in Office of Secretary of State May 17, 2011.

Note: Governor's explanation of partial veto is as follows:
"I am returning herewith, without my approval as to Section 1, Substitute House Bill 1089 entitled:

"AN ACT Relating to instructional materials provided in a specialized format version."

I am vetoing the intent section, Section 1 of the bill, because it is broader than the substantive language in the bill. Vetoing the intent section may avoid confusion and does not impede implementation of the bill.

For this reason I have vetoed Section 1 of Substitute House Bill 1089.
With the exception of Section 1, Substitute House Bill 1089 is approved."